

GENERAL PROVISIONS GOVERNING DISCOVERY; DUTY OF DISCLOSURE

[Former Local Civil Rule requirements as to automatic disclosures have been significantly modified in compliance with Federal Rule changes effective December 1, 2000. The former Local Civil Rule exemptions from automatic disclosure and expert witness disclosure requirements have been eliminated.]

26.01: *Interrogatories to be Answered by Each Party.* The following information is used for purposes of assigning cases and shall be filed with the Clerk of Court and served on all parties at the time a party first appears. In removed cases, the removing defendant shall file these responses with the removal papers. All other parties shall file responses no later than ten (10) days after service of the notice of removal. If a party fails to file the required responses on time, the Clerk of Court shall draw the requirement to the attention of the party (or counsel) and allow ten (10) days to file responses. The Clerk of Court shall have the authority to extend the time for responding. Absent order to the contrary, categories of actions listed in Fed. R. Civ. P. 26(a)(1)(E) are exempt from the requirements of this Local Civil Rule.

- (A) State the full name, address, and telephone number of all persons or legal entities who may have a subrogation interest in each claim and state the basis and extent of said interest.
- (B) As to each claim, state whether it should be tried jury or nonjury and why.
- (C) State whether the party submitting these responses is a publicly owned company and separately identify: (1) each publicly owned company of which it is a parent, subsidiary, partner, or affiliate; (2) each publicly owned company which owns ten percent or more of the outstanding shares or other indicia of ownership of the party; and (3) each publicly owned company in which the party owns ten percent or more of the outstanding shares.
- (D) State the basis for asserting the claim in the division in which it was filed (or the basis of any challenge to the appropriateness of the division).
- (E) Is this action related in whole or in part to any other matter filed in this District, whether civil or criminal? If so, provide: (1) a short caption and the full case number of the related action; (2) an explanation of how the matters are related; and (3) a statement of the status of the related action. Counsel should disclose any cases which *may be* related regardless of whether they are still pending. Whether cases *are* related such that they should be assigned to a single judge will be determined by the Clerk of Court based on a determination of whether the cases:

arise from the same or identical transactions, happenings, or events; involve the identical parties or property; or for any other reason would entail substantial duplication of labor if heard by different judges.¹¹

- (F) [*Defendants only.*] If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct identification.
- (G) [*Defendants only.*] If you contend that some other person or legal entity is, in whole or in part, liable to you or the party asserting a claim against you in this matter, identify such person or entity and describe the basis of said liability.

26.02: *Rules for Answering Court Interrogatories.* The following rules shall be adhered to in responding to the foregoing interrogatories and completing the Fed. R. Civ. P. 26(f) report.

- (A) Only a signature by counsel is required if the party is represented; no party verification is required.
- (B) Each interrogatory shall be set forth immediately prior to the answer thereto.
- (C) Answers shall identify all attorneys representing a party by full name, district court identification number, firm name, mailing address, telephone, and facsimile numbers. While not required, an e-mail address is also requested if counsel regularly utilizes e-mail for business communications.
- (D) In the event any question cannot be fully answered after the exercise of reasonable diligence, the party shall furnish as complete an answer as possible and shall supplement as soon as is feasible.
- (E) Responses pursuant to Local Civil Rules 26.01 and 26.03 may be relied on and used in the same manner as discovery responses obtained under the Federal Rules of Civil Procedure.
- (F) The provisions of Local Civil Rules 26.01 and 26.03 shall not apply, absent order to the contrary, in actions exempted from the requirements of Fed. R. Civ. P. 26(a)(1) and (f) by Fed. R. Civ. P. 26(a)(1)(E).

¹¹ This information is required in addition to completion of the “related cases” block on the JS44 Civil Cover Sheet. Although the Civil Cover Sheet requires only that parties disclose *pending* related cases, this interrogatory and this District’s assignment procedures require disclosure of *any prior or pending* related case whether civil or criminal. Therefore, both categories should be disclosed in response to this interrogatory as well as on the JS 44 Civil Cover Sheet.

26.03: *Rule 26(f) Report.*

- (A) **Content.** In addition to the requirements set forth in Fed. R. Civ. P. 26(f) for a report to the Court, the parties shall include the following information in their Rule 26(f) report which shall be filed with the Court:
- (1) A short statement of the facts of the case;
 - (2) The names of fact witnesses likely to be called by the party and a brief summary of their expected testimony;
 - (3) The names and subject matter of expert witnesses (if no witnesses have been identified, the subject matter and field of expertise should be given as to experts likely to be offered);
 - (4) A summary of the claims or defenses with statutory and/or case citations supporting the same;¹²
 - (5) Absent special instructions from the assigned judge, the parties shall propose dates for the following deadlines listed in Local Civil Rule 16.02:
 - (a) Exchange of Fed. R. Civ. P. 26(a)(2) expert disclosures; and
 - (b) Completion of discovery.
 - (6) The parties shall inform the Court whether there are any special circumstances which would affect the time frames applied in preparing the scheduling order. *See generally* Local Civil Rule 16.02(C) (Content of Scheduling Order).
 - (7) The parties shall provide any additional information requested in the Pre-Scheduling Order (Local Civil Rule 16.01) or otherwise requested by the assigned judge.
- (B) ***Form of Submission.*** The parties are encouraged to submit a joint Fed. R. Civ. P. 26(f) report, but joint reports are not required. *See* Fed. R. Civ. P. Form 35. Any separate report shall be served on all parties.

¹² Generic references to the “general common, statutory or regulatory law” of the relevant jurisdiction will not be deemed an adequate response. Neither are lengthy discussions of commonly applied claims and defenses required. For most causes of action or defenses, a single citation to a single statute or case establishing the elements will suffice.

- (C) *Exemptions.* Absent order to the contrary, this Rule shall not apply to the categories of action listed in Fed. R. Civ. P. 26(a)(1)(E) as those actions are exempt from the Fed. R. Civ. P. 26(f) conference and report requirements.
- (D) *Report without Conference.* In any action in which the parties are exempted from the Fed. R. Civ. P. 26(f) conference requirement, but in which the Court seeks information in the form of a Fed. R. Civ. P. 26(f) report as supplemented by the requirements of this Local Civil Rule, the parties shall respond to any query relating to agreement of the parties by stating their position as to the subject matter of the query. *See generally*, Local Civil Rule 16.00(B) (addressing special procedures in *pro se* actions).

26.04: *Pretrial Discovery for Civil Actions Exempted from Fed. R. Civ. P. 26(a)(1).* Pretrial discovery in all civil cases that are exempt under Fed. R. Civ. P. 26(a)(1)(E) must be completed within a period of ninety (90) days following the joinder of issues unless otherwise ordered. If any expert witnesses will be called, Fed. R. Civ. P. 26(a)(2) disclosures shall be made at least thirty (30) days before the close of discovery. Fed. R. Civ. P. 26(a)(3) disclosures shall be completed as set forth in that federal rule. No otherwise applicable deadline is waived absent order to that effect.¹³

In other appropriate cases not covered by Fed. R. Civ. P. 26(a)(1)(E), the Court may, by order, waive some or all of the otherwise applicable requirements and direct the parties to proceed under this Local Civil Rule. *See* Local Civil Rule 16.00 (discussing non-exempt *pro se* actions).

26.05: *Civil Pretrial Briefs.* All attorneys having civil cases set for trial shall furnish the Court a pretrial brief at least five (5) business days prior to the date set for jury selection in the term of court in which the case is set for trial unless another date is ordered by the Court. The pretrial brief shall contain the following information.

- (A) The name of each attorney, district court identification number, and the full name of each firm handling the case.
- (B) A list of any motions still pending.
- (C) A brief and concise statement of the facts upon which each claim or defense is based.

¹³ Cases listed in Fed. R. Civ. P. 26(a)(1)(E) are expressly exempted from: (1) the initial disclosure requirements of Fed. R. Civ. P. 26(a)(1); (2) the conference and report requirements of Fed. R. Civ. P. 26(f); and (3) the related Fed. R. Civ. P. 26(d) bar on discovery before the conference. Numerous other deadlines set by federal and local rule (*e.g.*, Fed. R. Civ. P. 26(a)(2)-(3) and Local Civil Rule 26.05) remain in effect absent order to the contrary. *See generally*, Local Civil Rule 16.02(C) (listing most federal and local rule deadlines).

- (D) Additional legal authorities upon which each claim or defense is based not listed in the Fed. R. Civ. P. 26(f) report to the Court. *See* Local Civil Rule 26.03(A)(4).
- (E) Any unusual questions of law concerning admission of evidence or procedure likely to arise in the trial of the case.
- (F) Whether the possibility of a compromise settlement has been discussed and explored with opposing counsel. State specifically whether an offer has been made and the position of each party as to settlement; if no attempt to settle has been made, state the reasons. If nonjury, counsel should not disclose settlement negotiations.
- (G) The names of the witnesses expected to be called and a summary of their anticipated testimony. Whether the exclusion of a witness or witnesses is requested pursuant to Federal Rule of Evidence 615. If no request is made herein, it shall be deemed waived.
- (H) The damages claimed should be set forth in detail, including, but not necessarily limited to:
 - (1) Where permanent injuries are claimed, their nature must be described with particularity, and plaintiff's life expectancy must be given. Attach copies of medical reports and doctors' statements where available;
 - (2) Special damages claimed must be specified in detail. Thus, in personal injury cases, medical, nursing, hospital, and similar expenses should be itemized by giving the names of persons and institutions and the amount paid to or owing each. If property damage is claimed, state the cost of repairs and names of persons making them; or, if incapable of repair, the value of the property immediately before the accident and immediately afterwards;
 - (3) If loss of earnings or profits is claimed, state the amount, the manner of computation, the period for which loss is claimed, and the name of employer, if applicable;
 - (4) In death cases, state the age, employment, rate of earnings, marital status, and life expectancy of deceased; also, the names, ages, and the relationship of the dependents;
 - (5) The defendant should specify its position concerning damages.

- (I) Where a contract or a writing is involved:
 - (1) If a written contract or a writing is involved, a copy should be furnished to the Court, and the portions in controversy particularized, with a statement as to the claimed construction thereof, and performance or nonperformance thereof, or obligation in connection therewith;
 - (2) If the contract is oral, its substance should be given; and where there is a dispute concerning its terms, the controverted terms should be specified and the same issues covered as above mentioned as to written contracts.
- (J) Where the relief sought is not covered by (H) above or is in addition thereto, state the nature of the relief sought and the reason(s) such relief should or should not be granted.
- (K) Counsel's best estimate of the time required for trial.
- (L) Any special matters to which the Court's attention is sought or required.
- (M) Any reason why the case cannot be tried at the term for which it is set for trial.
- (N) The final list of exhibits intended to be used in the trial of the case with any objections noted. This list shall be served on opposing counsel.
- (O) Attached to the pretrial brief should be counsel's request for voir dire questions (*see* Local Civil Rule 47.04) and request for jury instructions. Copies of the requests for voir dire questions and jury instructions shall be served on opposing counsel. If the requests for voir dire and jury instructions are not submitted five (5) days prior to the selection of the jury, counsel shall be deemed to have waived the right to submit voir dire questions and jury instructions, unless made necessary by events at trial.

It is understood that absent order to the contrary, the information required by Local Civil Rule 26.05(A)-(M) is for the sole use of the Court and will not be furnished to opposing counsel without consent of counsel. Therefore, these portions of the trial brief ((A)-(M)) are not served absent order to the contrary. Information contained in (N) and (O) shall be served on opposing parties.

Proposed findings and conclusions should not be submitted with the pretrial brief unless requested by the Court.

26.06: *Supplementation of Civil Pretrial Briefs and Disclosures.* The information required by Local Civil Rules 26.05 and 26.07 may be amended or supplemented as necessary if the case is not reached for trial during the designated term or if other circumstances require amendment or supplementation.

26.07: *Trial Exhibits.*

- (A) In addition to the Fed. R. Civ. P. 26(a)(3) duty to file and serve exhibit lists and objections and serve objections thereto, and unless otherwise ordered by the Court, attorneys for each side shall meet at least five (5) business days prior to the date set for submission for pretrial briefs for the purpose of marking and exchanging all exhibits (other than solely for impeachment purposes) intended to be used at trial. Where possible, counsel shall agree on the admissibility of all trial exhibits. In the event there is an unresolved objection to any exhibit, the attorneys shall notify the Court of such objection in the pretrial brief.

Failure to meet, mark, and exchange exhibits may be deemed a waiver of the right to use such exhibits. Failure to raise a timely objection under Fed. R. Civ. P. 26(a)(3) or to preserve that objection by compliance with this Local Civil Rule may be deemed a waiver of the right to raise objections at trial.

Objections shall be specific but succinct, stating the legal grounds and short argument. For example, “lack of foundation -- plaintiff cannot demonstrate that these documents are business records kept in the regular course of business; relevancy -- these documents relate to a corporation other than the defendant in this action,” would be sufficient.

- (B) All exhibits must be numerically marked with exhibit stickers consistent with the type provided by the Clerk of Court. An exhibit list must be filed in all cases. (*See also* Fed. R. Civ. P. 26(a)(3) (pretrial disclosures) and Local Civil Rule 83.II.01 (handling of exhibits).)
- (C) This Rule requires a physical exchange of exhibits marked as they will be used at trial. Once these exhibit designations are made, exhibits may be excluded or withdrawn but *shall not be renumbered*. A meeting to exchange exhibits and to determine if agreement can be reached as to any objections to exhibits shall be held on or before the “meet, mark, and exchange” date. If marked exhibits have not previously been physically exchanged, they shall be exchanged on this date.

26.08: *Protective Orders and Agreements.* There is no requirement for prior judicial approval of protective agreements intended to limit access to and use of materials gained in discovery. Protective agreements or orders which address the filing of documents with the Court shall, however, require compliance with Local Civil Rule 5.03, or such other procedures as the Court directs, before any document is filed under seal. Discovery materials protected by a court order issued pursuant to Fed. R. Civ. P. 26(c) shall not be filed without compliance with Local Civil Rule 5.03 unless the order provides other procedures to satisfy the requirements of governing case law. *See* Local Civil Rule 5.03.